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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE**

Tay and Jarrad's LLC, an Arizona limited liability company d/b/a Ace Vending of Tucson,

CASE NO.

Plaintiff,

COMPLAINT

v.

Borderland Vending Company, LLC, an Arizona limited liability company,

HON.

Defendant.

For its Complaint against defendant Borderland Vending Company, LLC ("Defendant"), Plaintiff Tay and Jarrad's LLC ("Plaintiff") alleges:

1. Plaintiff is a limited liability company duly formed and registered with the Arizona Corporation Commission, with its primary place of business in Yuma.
2. Defendant is a limited liability company duly formed and registered with the Arizona Corporation Commission, with its primary place of business in Willcox.
3. This Court has jurisdiction over the subject matter of this lawsuit pursuant to Ariz. Const., Art. 6, and ARS 12-123.
4. The demand or value of property in controversy in this Complaint, exclusive of interest and costs, exceeds the minimum jurisdictional requirements.
5. Venue is proper in this Court pursuant to ARS 12-401.

1 6. On or about January 1, 2015 Plaintiff and Defendant entered into a contract for
2 the purchase/sale of certain vending machine company assets owned by Defendant (the
3 "Contract").

4 7. Pursuant to the Contract, Plaintiff agreed to purchase certain vending machine
5 accounts from Defendant.

6 8. Defendant agreed not to compete with Plaintiff in Graham County or any
7 bordering county.

8 9. Plaintiff was required to pay a total of \$15,000, plus certain commissions.

9 10. Additionally, under paragraph 2, the Contract required Plaintiff to pay monthly
10 20% of gross sales on the accounts.

11 11. However, the commission payments were to terminate as to any/all accounts that
12 Plaintiff "lost."

13 12. The word "lost" is defined as something that is "no longer possessed." Merriam-
14 Webster Dictionary <https://www.merriam-webster.com/dictionary/lost>.

15 13. The Contract also included a minimum payment provision requiring Plaintiff to
16 pay Defendant a minimum monthly payment of \$1,150 if the total amount of the
17 commissions equaled less than that amount.

18 14. However, the \$1,150 minimum monthly payment was to be reduced by any/all
19 amounts of any accounts lost, as described in paragraph 2.

20 15. Plaintiff paid the initial \$15,000 during the first three months after executing the
21 Contract.

22 16. Plaintiff also made full monthly commission payments to Defendant from March
23 2016 through April 2017.

24 17. At Defendant's demand, from May 2017 to August 2018 Plaintiff made monthly
25 payments in the amount of \$2,500, a total of \$40,000.

26 18. In April 2017 Plaintiff sold all of the accounts to a third-party.



1 19. In November 2017, Defendant and/or its owner and/or its affiliate purchased all
2 of the accounts from the third-party.

3 20. Since the time of that purchase, Defendant and/or its owner and/or its affiliate
4 has been conducting business and profiting from the accounts throughout Graham County.

5 21. Plaintiff lost all of the accounts at the time of Plaintiff's sale of the accounts to
6 the third-party, from which time onward Plaintiff permanently ceased to possess the
7 accounts.

8 22. Alternatively, plaintiff lost all of the accounts as of the date upon which the third-
9 party transferred the accounts to Defendant and/or its owner and/or its affiliate (November
10 2017 to the present).

11 23. At Defendant's demand, between April 2017 and March 2019, Plaintiff made
12 payments in excess of amounts owed.

13 **CAUSE OF ACTION – BREACH OF CONTRACT/BAD FAITH**

14 24. Defendant knowingly and voluntarily entered into the Contract with Plaintiff.

15 25. As described above, by demanding payments after Defendant's right to receive
16 payments had terminated under the Contract, and otherwise, Defendant breached the
17 Contract.

18 26. Defendant's acts, described above, were in breach of the implied covenant of
19 good faith and fair dealing.

20 27. Plaintiff suffered damages as the direct, proximate cause of Defendant's
21 breaches.

22 **CONSTRUCTIVE TRUST**

23 28. Defendant's receipt of funds in excess of amounts owed under the Contract
24 resulted in a constructive trust.

25 29. Defendant holds the excess funds in constructive trust for Plaintiff's benefit.

26 30. Plaintiff is entitled to disgorgement and return of all such overpaid funds.



1 WHEREFORE, Plaintiff prays for judgment against Borderland Vending Company,
2 LLC as follows:

- 3 1. General and special damages in a liquidated amount to be determined by a
4 jury at trial;
- 5 2. Disgorgement and return of funds held in constructive trust for Plaintiff's
6 benefit;
- 7 3. Costs and attorney's fees pursuant to ARS 12-341.01 and ARS 12-341;
- 8 4. Interest on the plaintiff's liquidated claim for damages from when first due
9 until paid in full, pursuant to ARS 44-1201; and
- 10 5. Such other relief as the Court deems appropriate under the circumstances.

11
12 DATED this 18th day of April, 2019.

13 LAIRD LAW PLLC



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15 Brian A. Laird
16 Attorney for Plaintiff
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